

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

LANG VO TRAN,

Plaintiff,

v.

ALFONSO DAVID, et al.,

Defendants.

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Case No. 09-cv-00302-DRH-DGW

SHOW CAUSE ORDER

Plaintiff filed an amended complaint on December 9, 2009 (Doc. 6). The United States Marshals Service sent a request for waiver of service to Defendant Olukunle Obadina pursuant to Federal Rule of Civil Procedure 4(d) on February 11, 2010, (Doc. 9). On March 25, 2010, the Marshal was informed by Chalene Whitley of the Illinois Department of Corrections (“IDOC”) that Defendant Obadina is currently retired and has no anticipated date of return to the IDOC (Doc. 12). On May 3, 2010, the Court ordered the IDOC to provide the U.S. Marshals Service with the last known address of Defendant Obadina (Doc. 18). A summons was also served on Defendant Obadina on August 30, 2010 (Doc. 40). The waiver of service was returned unexecuted on October 22, 2010 (Doc. 48). Attached to the waiver of service is documentation from Joe Ebbitt of Wexford Health Sources, Inc. stating, “Defendant Obadina has permanently retired to Africa – we have no address for him in Africa.” *Id.* To date, Defendant Obadina has not been served.

The Federal Rules of Civil Procedure require a plaintiff to serve process upon defendants within 120 days after the complaint is filed. Fed. R. Civ. P. 4(m). The 120 day requirement, however, does not apply to service in a foreign country. *Id.* Despite there being no time requirement under the Federal Rules, a plaintiff does not have an unlimited amount of time to

serve a defendant living in a foreign country. *Nylok Corp. v. Fastener World Inc.*, 396 F.3d 805, 807 (7th Cir. 2005). It has been nearly 377 days since Plaintiff filed his amended complaint, and 60 days since Plaintiff was notified that Defendant Obadina has relocated to Africa.

The Court therefore **ORDERS** Plaintiff to **SHOW CAUSE, in writing**, why this Court should not recommend that all claims against Defendant Obadina be dismissed. Plaintiff's response to this Order must be **received** by the Court **no later than January 11, 2011**. Failure to respond to this Order may result in a report and recommendation that all claims pending against Defendant Obadina be dismissed.

DATED: December 20, 2010



DONALD G. WILKERSON
United States Magistrate Judge